

OLC Input to FOIA
OLC 1/10/88
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I feel obliged to bring to your attention that Congressional documents and Congressional information recorded in CIA memoranda, provided to CIA under clear caveats of confidentiality, are being subject to requests, though the Act does not directly apply to the Congress. Under the Act, CIA must acknowledge the existence of such documents and memoranda to the requester; however, we have respected the confidentiality imposed by the Congress. We are now involved in litigation, wherein the plaintiff is seeking disclosure of the Executive Session transcript of the House Committee legislative hearings on the National Security Act of 1947 which established the Central Intelligence Agency.

*This was our
Submission to OLC*

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

The Honorable Walter F. Mondale
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1977.

During 1977, 4,843 requests for access to records were logged and put into processing by the Agency, of which 1,252 were submitted under the Freedom of Information Act. An additional 1,190 request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. A summary of Agency activity, including Privacy Act and Executive Order 11652 mandatory classification review requests as well as Freedom of Information requests, is provided in the statistical table below. You will note that the processing backlog increased by 1,138 cases during 1977.

	<u>FOIA</u>	<u>PA</u>	<u>EO</u>
1. Requests carried over from CY 1976	536	598	98
2. Requests logged during CY 1977	1,252	3,023	568
3. Total requests closed during CY 1977	772	2,397	536

a. Granted in full	167	195	156
b. Granted in part	241	520	268
c. Denied in full	95	124	101
d. No record available and misc. (e.g., canceled or with- drawn)	269	1,558	11
 4, Requests carried over to CY 1978	 1,016	 1,224	 130

In addition to the above, the Agency responded during 1977 to numerous other requests from members of the public for copies of unclassified CIA publications such as maps, reference aids, monographs, and translations of foreign language broadcasts and press items--either directly or by referral to those federal agencies with responsibility for the distribution of such CIA products.

The number of formal requests levied upon the Agency increased by 38.7 percent (1,352 requests) over the previous year. Freedom of Information requests during 1977 showed an increase of 64.5 percent (491) over 1976. In order to handle this workload, manpower equivalent to 109 employees working full-time was assigned to the processing of Freedom of Information and related requests, appeals, and litigation--an increase of some 5.9 percent over the manpower allocation of 1976. Despite our increased efforts, however, the processing backlog grew.

I have explained in previous reports the factors which make the processing of Freedom of Information and similar requests a time-consuming matter for the Agency. These factors include a decentralized filing system, a frequent need for intra- or interagency coordination in the review of records, and the extreme sensitivity of many of our records. Except for those rare instances when Freedom of Information requests happen to duplicate those previously processed, it has been impossible for the Agency to respond within the 10 working days stipulated by the Act, or, for that matter, within the 20 working days permitted by the Act whenever certain conditions are met. We follow a general policy of "first-in, first-processed" in handling requests, and our processing backlog is such that the statutory deadline for responding usually has elapsed prior to our commencing work on requests. The situation in responding to appeals in a timely manner is, if anything, even worse.

It is unusual, indeed perhaps unique, for an intelligence agency to be required to entertain requests from the public

for copies of intelligence records. Nonetheless, I assure you that the Agency has made, and continues to make, every effort to comply fully with both the letter and spirit of the Freedom of Information Act, consistent with the Director's statutory mandate to protect intelligence sources and methods from unauthorized disclosure. To this end, a sizable commitment of resources has been allocated to the administration of the Act. In my judgment, the Agency cannot divert much additional manpower to the program without impairing its ability to perform basic foreign intelligence missions. Moreover, there is a limit to the number of personnel qualified to review for releasability sensitive intelligence records. Mistakes would be costly. Unless our sources are afforded protection from disclosure, they could lose confidence in our ability to maintain secrets and back off from full collaboration, thereby impairing the Agency's ability to collect the intelligence essential to national survival. In view of these considerations, we urge that the Congress consider amending the Act so that the time constraints are reasonable and that both the volume of records and their possible sensitivity with respect to national security matters are duly taken into account.

Respectfully,

John F. Blake
Deputy Director
for
Administration

Enclosure

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IPS/ [redacted] 22 February 1978

Distribution:

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FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1977

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 336
2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., requests) invoked</u>
(b)(1)	234
(b)(2)	54
(b)(3)	284
(b)(4)	3
(b)(5)	21
(b)(6)	146
(b)(7)	25
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	284

(c) Other authority: None

In 13 instances, requesters appealed on the basis of our failure to respond within the statutory deadline, and initial processing was therefore halted prior to completion. Seven requests were withdrawn by the requesters after processing had commenced. Finally, 83 requests were canceled because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee deposits or written assurances that fees would be paid, etc. We do not regard any of the above actions as denials inasmuch as the Agency was prepared to act upon the requests, and they have thus not been included in in the 336 figure given in answer to question 1, above.

3. Names and titles of each person who is responsible for the denial of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
25X1	Former Assistant for Information, DDA	9
	Chief of the Information Review Group, Office of Security	9
	Director of Medical Services	1
	Director of Technical Service	8
	Former DDO Information Review Officer	141
	Assistant Legislative Counsel	1
	Deputy Director of Geographic and Cartographic Research	1
	Former Deputy Director of Regional and Political Analysis	5
	Deputy Director for Science and Technology	1
	Former Chief of the Information Review Group, Office of Security	35
	Director of Research and Development	2
	Director of Central Reference	4
	Director of Economic Research	3

Evans, Ben C

Executive Secretary, Office of the DCI	1
Director of the Office of Imagery Analysis	2
Director of the National Photographic Inter- pretation Center	3
Director of Personnel	6
Former Director of Security	1
Former Chief of the Plans and Resources Staff, Office of Training	1
Deputy Director of Security for Policy and Management	3
Former Deputy Director of Regional and Political Analysis	1
General Counsel	8
Former Deputy to the DCI for National Intelligence	1
Director of Logistics	2
Deputy Director of Economic Research	9
DDO Information Re- view Officer	29
Deputy Director of Logistics	1
Chief of the Policy and Coordination Staff, DDO	3

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Deputy Director of Scientific Intelligence	3
Deputy Director of Training	1
Former Deputy Director for Intelligence	1
Former Special Assistant to the Deputy to the DCI - Intelligence Community	3
Deputy Director of Strategic Research	2
Inspector General	1
Director of Scientific Intelligence	1
Former Deputy Director for Operations	2
Information and Privacy Coordinator	4

It will be noted that the total number of instances of participation amounts to only 313, some 23 less than the number of requests denied in whole or in part. The explanation for this is that a number of requests concerned other agencies' records, referred to the CIA for review. Following the review, these records were returned to the originator, along with the CIA's determinations and recommendations, for the originating agency's response to the requester. Under these circumstances, no CIA denying official was identified inasmuch as the records were denied to the requester by the agency which originated them.

4. Total number of intra-agency appeals from adverse initial decisions made pursuant to subsection (a)(6): 63

The above figure does not include 13 appeals resulting from the Agency's failure to respond within the statutory deadline. In 22 additional cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act, upon appeal, in accord with the wishes of the appellants.

(a) Number of appeals in which, upon review, request for information was granted in full: 1

(b) Number of appeals in which, upon review, request for information was denied in full: 17

(c) Number of appeals in which, upon review, request was denied in part: 65

5. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b)(1)	68
(b)(2)	21
(b)(3)	73
(b)(4)	0
(b)(5)	10
(b)(6)	56
(b)(7)	38
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	73

6. Names and titles of each person who, on appeal, is responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Blake, John F.	Deputy Director for Administration	20
Dirks, Leslie C.	Deputy Director for Science and Technology	3
Malanick, Michael J.	Former Acting Deputy Director for Administration	19

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	Former Deputy to the DCI for the Intelligence Community	1
Stevens, Sayre	Deputy Director of the National Foreign Assessment Center	2
Wells, William W.	Former Deputy Director for Operations	75

7. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F); etc.: None
8. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

No amendments were published in 1977.

9. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab A for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1977 was \$16,439.

10. A. Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

- B. Costs:

During calendar year 1977, the Agency expended 192,800 man-hours (the equivalent of approximately 109 man-years) in processing Freedom of Information and related (i.e., Privacy Act and Executive Order 11652) requests, appeals, and litigation. This represents a 5.9 percent increase over the previous year. Calculated on the basis of an average clerical grade of GS-06/Step 3, and an average professional grade of GS-12/Step 5, the total salary expenditures for the year amounted to approximately \$2,161,600. Taking into account fringe benefits such as Government contributions to insurance, hospitalization, and

retirement programs, we estimate the total personnel costs at \$2,377,700. Of this total, approximately \$1,021,250 can be attributed to administration of the Freedom of Information Act.

Such additional costs as office space, equipment rentals, office supplies, EDP support, etc., have not been calculated. It is thought, however, that these expenditures would be relatively minor in comparison with the personnel costs estimated above.

C. Compliance with time limitations for agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were not in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have therefore explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the agency was unable to comply with the request within the applicable time limits: 13

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: 1

See Tab B for a copy of the court order.

D. Internal Memoranda:

A copy of [redacted], "Freedom of Information Act, Privacy Act, and Executive Order 11652 Handbook," is enclosed as Tab C.

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